

Jonathan J. Belaga, Esq. (SBN 275229)  
E-mail: jbeleaga@skanewilcox.com  
SKANE MILLS LLP  
33 New Montgomery Street, Suite 1250  
San Francisco, CA 94105  
Tel: 415.431.4150 Fax: 415.431.4151

Gregory B. Thomas (SBN 239870)  
E-mail: gthomas@bwslaw.com  
Temitayo O. Peters (SBN 309913)  
E-mail: tpeters@bwslaw.com  
BURKE, WILLIAMS & SORENSEN, LLP  
1999 Harrison Street, Suite 1650  
Oakland, CA 94612-3520  
Tel: 510.273.8780 Fax: 510.839.9104

Attorneys for Defendants  
ALAMEDA COUNTY SHERIFF'S OFFICE,  
ALAMEDA COUNTY, DEPUTY JOE, and  
DEPUTY IGNONT (collectively "ALAMEDA  
COUNTY DEFENDANTS")

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO/OAKLAND DIVISION

**ALAMEDA COUNTY MALE PRISONERS** And Former Prisoners,  
DANIEL GONZALEZ, et al. on behalf of  
themselves and others similarly situated, as  
a Class, and Subclass;

**ALAMEDA COUNTY FEMALE PRISONERS** And Former Prisoners,  
JACLYN MOHRBACHER, ERIN ELLIS,  
DOMINIQUE JACKSON, CHRISTINA  
ZEPEDA, ALEXIS WAH, AND KELSEY  
ERWIN, et al on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

ALAMEDA COUNTY SHERIFF'S  
OFFICE, ALAMEDA COUNTY, Deputy  
Joe, Deputy Ignont (sp) John and Jane  
ROEs, Nos. 1 – 25;

WELL-PATH MANAGEMENT, INC., a  
Delaware Corporation, (formerly known as

Case No. 3:19-cv-07423-JSC

**ALAMEDA COUNTY DEFENDANTS'  
SUPPLEMENTAL BRIEF IN  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR CLASS CERTIFICATION**

1 California Forensic Medical Group) a  
 2 corporation; its Employees and Sub-  
 3 Contractors, and Rick & Ruth ROEs  
 4 Nos.26-50;

5 ARAMARK CORRECTIONAL  
 6 SERVICES, LLC, a Delaware Limited  
 7 Liability Company; its Employees and  
 8 Sub-Contractors, and Rick & Ruth ROES  
 9 Nos. 51-75,

10 Defendants.

11 The Alameda County Defendants respectfully submit the following supplemental brief  
 12 pursuant to the Court's request at Dkt. No. 257 (Order).

### 13 **I. INTRODUCTION**

14 The Court's Order requests supplemental briefing on Plaintiffs' articulation of the two  
 15 theories behind their request for certification of an "inadequate sanitation subclass" during the  
 16 February 23 hearing on Plaintiffs' pending Motion for Class Certification (Motion). Certification  
 17 of an "inadequate sanitation subclass" based on Plaintiffs' asserted theories of (1) inadequate  
 18 sanitation supplies, including an alleged failure to address sanitation issues related to mentally ill  
 19 inmates, and (2) a lack of bathroom access is inappropriate and must be denied.

20 Certification of an "inadequate sanitation subclass" should be denied for three principal  
 21 reasons. First, Santa Rita Jail ("the Jail") has established policies and procedures in place to  
 22 ensure proper and adequate inmate sanitation and bathroom access. Second, Plaintiffs cannot  
 23 meet Federal Rule of Civil Procedure 23's requirements for class certification of their proposed  
 24 subclass. And finally, third, Plaintiffs' proposed inadequate sanitation subclass is barred by the  
 25 principles of *res judicata*.

### 26 **II. ARGUMENT**

27 During the February 23 hearing on Plaintiffs' Motion, Plaintiffs clarified that their  
 28 proposed inadequate sanitation subclass is premised on two theories. Plaintiffs' first theory is  
 based on Alameda County Sheriff's Office's (ACSO) alleged "policy requiring inmates to  
 maintain the sanitation of their own cells and common areas, but failing to have a policy or  
 practice which provides inmates with adequate sanitation supplies, or a policy for addressing

1 inmates housed with those who cannot functionally maintain their own sanitation because of  
 2 mental health issues, which impacts sanitation for all inmates within that congregate housing  
 3 area.” Dkt. No. 257 at 1:18-22. Plaintiffs’ second theory is based on ACSO’s alleged “policy of  
 4 not providing bathrooms in the common areas, and inmates’ difficulties obtaining access to  
 5 bathroom areas during POD or out of cell time.” *Id.* at 1:23-25. Class certification of a proposed  
 6 subclass on both theories is inappropriate and must be denied.

7 **A. ACSO’s Policies and Procedures Ensure Proper and Adequate Sanitation and**  
 8 **Bathroom Access.**

9 **1. ACSO’s Inmate Sanitation Policies**

10 ACSO has existing and well-established policies and procedures in place to ensure proper  
 11 inmate sanitation. Pursuant to ACSO Detention and Corrections, Policy and Procedure 15.01,  
 12 15.02, and 15.03, inmates are responsible for maintaining the cleanliness of their own cells. Decl.  
 13 of Phillip Corvello (Corvello Decl.) ¶¶ 3- 4. Cleaning materials are made available to inmates in  
 14 a reasonable timeframe by the housing unit deputies upon request. *Id.* at ¶ 4. Deputies are also  
 15 instructed to offer cleaning materials to inmates at least once per shift (twice a day), regardless of  
 16 whether cleaning materials are requested, and to ensure that this offering is documented in the  
 17 Redbook. *Id.* See also *id.* at ¶ 8, Exh. G to Corvello Decl. at G-2 (requiring deputies to oversee  
 18 cell cleaning “twice daily at 0800 hours and 1800 hours”). The available cleaning materials  
 19 include mops, buckets, vacuums, bleach, restroom cleaner, bathroom cleaner, and daily floor  
 20 cleaner. *Id.* at ¶¶ 11-12, Exh. H to Corvello Decl.

21 Inmate workers (also sometimes referred to as pod workers) are responsible for  
 22 maintaining the cleanliness of each housing unit’s common areas, which are specified under  
 23 Policy 15.01 and include the housing unit’s multipurpose rooms, showers, quasi yards (walled  
 24 outdoor areas adjacent to housing units), and hallways. Corvello Decl. ¶ 5. Each housing unit  
 25 has at least two – but typically more than two – assigned inmate workers. *Id.* Inmate workers  
 26 have access to the housing unit’s cleaning supplies throughout the day. *Id.* Inmate workers are  
 27 responsible for cleaning up after meal services, and as needed, and are generally very proactive at  
 28 addressing self-identified and deputy-identified cleanliness issues in their assigned housing units.

1 ACSO also contracts with Crime Scene Cleaners, a professional cleaning service, to address any  
 2 potential biohazards (such as blood, fecal matter, etc.) identified in the housing units and  
 3 elsewhere throughout the jail facility. *Id.* at ¶ 6. *See also id.* at ¶ 8, Exh. G to Corvello Decl. at  
 4 G-2 (discussing the use of inmate workers and Crime Scene Cleaners).

5 With regards to personal sanitation, inmates are responsible for maintaining the  
 6 cleanliness of their own person under ACSO Detention and Corrections, Policy and Procedure  
 7 15.03. Corvello Decl. ¶ 4; RJN at ¶ 4, Exh. D. Every inmate is provided with a “free-line kit”  
 8 upon intake, which includes soap, a toothbrush, comb, and other personal hygiene materials.  
 9 Corvello Decl. at ¶ 13; Exh. I to Corvello Decl. Additional free-line kits can be ordered by  
 10 inmates through the commissary process even if they do not have money on their books. *Id.* In  
 11 addition to free-line kits, inmates have access to showers, soap, razors, nail clippers, hair cutting  
 12 implements and other personal hygiene materials in their housing units upon request and in  
 13 accordance with their classification restrictions. *Id.*; RJN at ¶ 4, Exh. D. Additional personal  
 14 hygiene materials are also available for purchase through commissary. *Id.*

15 To ensure that inmates follow proper sanitation practices, ACSO Detention and  
 16 Corrections Policy and Procedure 15.01 requires housing unit deputies to “inspect their housing  
 17 areas during each shift” and address any “cleanliness or maintenance problems” immediately.  
 18 Alameda County Defendants’ Request for Judicial Notice (RJN) ¶ 2, Exh. B at 1. Security  
 19 sergeants are also required to “inspect all housing units and other areas under their control at least  
 20 once per shift (twice a day), including weekends and holidays,” to “report their findings to the  
 21 Watch Commander,” and to ensure that their inspections are documented in the housing unit’s  
 22 Redbook. *Id.* *See also* Alameda County Defendants’ Request for Judicial Notice (“RJN”) ¶ 3,  
 23 Exh. C (setting forth a mandatory safety and sanitation inspection schedule in Detention and  
 24 Corrections Policy and Procedure 15.02); RJN ¶ 6, Exh. F to RJN (setting forth mandatory  
 25 supervisory inspections each shift and Redbook documentation of same in Detention and  
 26 Corrections Policy and Procedure 10.03).

27 ACSO also has established policies and procedures in place to ensure that mentally ill  
 28 inmates adhere to proper sanitation practices. It is currently ACSO’s practice to work with

1 inmates to prevent inmate cells from becoming disorderly and/or unsanitary. Corvello Decl. ¶¶ 8,  
 2 10; Exh G. Deputies are required to “make an effort to encourage” inmates to clean their cells  
 3 when they notice that a cell is “disorderly and/or unsanitary.” Corvello Decl. ¶ 8; Exh G. at G-2.  
 4 If the inmate refuses or is unable to clean their cell, deputies are required to work with inmate  
 5 workers or Crime Scene Cleaners (if appropriate) to have the cell cleaned when the inmate is  
 6 removed from their cell to attend an external appointment, participate in pod time or for some  
 7 other reason. *Id.* ACSO does not have any plans to halt any of these practices and is working to  
 8 ensure that all of these current practices are reflected in written policy. Corvello Decl. ¶ 8.

9 In accordance with the requirements set forth in the Consent Decree entered in *Ashok*  
 10 *Babu, et al. v. County of Alameda, et al.*, Case No. 5:18-cv-07677-NC (*Babu*), ACSO is also  
 11 actively working with the *Babu* Joint Experts to implement additional policies to comply with the  
 12 Consent Decree’s requirements. *Id.* at ¶ 9; *see also* RJN ¶ 1, Exh. A. Pertinent here, ACSO is  
 13 currently working with the *Babu* Joint Experts to revise Detention and Corrections Policy and  
 14 Procedure 10.03 to require supervisors to notate in the Redbook that they are reminding deputies  
 15 during their daily housing unit inspections to work with the inmates in their charge to ensure good  
 16 hygiene and cleanliness. *Id.* at ¶ 10. ACSO is also working with the *Babu* Joint Experts and  
 17 Adult Forensic Behavioral Health staff to promote effective communication practices to ensure  
 18 that inmates with severe mental illness, cognitive, developmental and/or intellectual disabilities  
 19 understand what is required to maintain good hygiene and cleanliness. *Id.* Lastly, ACSO is  
 20 working with the *Babu* Joint Experts to update Detention and Corrections Policy and Procedure  
 21 8.12, which governs inmate supervision and observation, to require deputies to notate the  
 22 cleanliness level of an inmate’s cell during mandatory observation rounds when an issue is  
 23 observed. *Id.*

## 24 2. ACSO’s Bathroom Access Policies

25 ACSO also has established policies and procedures in place to ensure that inmates are  
 26 provided with bathroom access during pod and out-of-cell time. Bathroom access during pod and  
 27 out-of-cell time is governed by Detention and Corrections Policy and Procedure 10.05. *Id.* at ¶  
 28 14. Because the housing unit common areas do not have bathrooms, Policy 10.05 requires

housing unit deputies to ensure that inmates are able to enter/exit their cells at least once per hour while they are out in the common areas. *Id.*; *see also* RJN ¶ 5, Exh. E. Inmate cell doors in both the celled and dormitory-style housing are closed and locked during pod time to prevent inmates from escaping observation, assaulting each other during pod time, limit un-authorized access to cells inmates are not assigned to, and to prevent inmates from manipulating the locks on their cell doors. Corvello Dec. at ¶ 14. Deputies are trained to permit inmates to access the restroom upon request when they are outside of their assigned living areas. *Id.* at ¶ 14. This common practice is not currently reflected in written policy, but will be incorporated in the near future through the ongoing policy revision process related to implementing the *Babu* Consent Decree. *Id.*; *see also* RJN ¶ 1, Exh. A at A-24 to A-26 (requiring the County to provide “reasonable access to bathroom facilities as needed” in conjunction with their efforts to increase out-of-cell time through the construction of additional recreational spaces). All of the aforementioned policies justify rejecting Plaintiffs’ proposed inadequate sanitation subclass.

**B. Class Certification Under Federal Rule of Civil Procedure 23(b)(2) is Unwarranted.**

Second, certification of Plaintiffs’ proposed inadequate sanitation subclass is inappropriate here because Plaintiffs have not met their burden of showing that the requirements of Federal Rule of Civil Procedure 23 are met. To be certified, Plaintiffs’ proposed subclass must satisfy all four of Rule 23(a)’s requirements. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013); *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001), *amended by* 273 F.3d 1266 (9th Cir. 2001). Because Plaintiffs have also clarified that this “is a Rule 23(b)(2) case,” they must also meet the requirements of Rule 23(b). Fed. R. Civ. P. 23(b)(2); Dkt. No. 234 at 10:14 (“Plaintiffs’ Reply in Support of Motion for Class Certification Re: County Defendants’ Opposition”).

Rule 23(a) requires Plaintiffs to establish numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a)(1)-(4). Class certification is proper only if the trial court has concluded, after a “rigorous analysis,” that Rule 23(a) has been satisfied.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542-43 (9th Cir. 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564

1 U.S. 338, 350-51 (2011)). Plaintiffs have not met any of Rule 23(a)'s requirements for their  
 2 proposed inadequate sanitation subclass for the reasons discussed at length in the Alameda  
 3 County Defendants' Opposition to Plaintiffs' Class Certification Motion. In brief, Plaintiffs have  
 4 not produced any evidence establishing that the inadequate sanitation claims alleged in the  
 5 operative complaint are true and representative of a specific, systemic, and longstanding ACSO  
 6 policy or practice to provide inmates at Santa Rita Jail with inadequate sanitation in violation of  
 7 any recognizable constitutional rights. *See M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832, 844  
 8 (5th Cir. 2012) (holding that "[m]ere allegations of systemic violations of the law . . . will not  
 9 automatically satisfy Rule 23(a)'s commonality requirement"); *Parsons v. Ryan*, 754 F.3d 657  
 10 (9th Cir. 2014) ("utterly threadbare allegations that a group is exposed to illegal policies and  
 11 practices" are insufficient to confer commonality). Plaintiffs proffer no evidence in support of  
 12 their claims other than self-serving declarations. This failure has prevented Plaintiffs from  
 13 meeting their burden of establishing that their inadequate sanitation allegations are common,  
 14 typical, and wide-spread among their proposed subclass. *See General Tel. Co. v. EEOC*, 446 U.S.  
 15 318, 330 (1980) (holding that 15 class members were too few to establish a class).

16 Plaintiffs have also failed to meet their burden of establishing that they are adequate  
 17 representatives of the proposed subclass. None of the named Plaintiffs asserted sanitation-related  
 18 allegations related to inadequate bathroom access in the operative complaint. *See* Dkt. No. Dkt.  
 19 No. 180. Only 6 of the remaining 8 named Plaintiffs asserted sanitation-related allegations  
 20 related to inadequate sanitation supplies in the operative complaint and at least one has been  
 21 released from custody. *Id.* at ¶¶ 14.3.2, 14.3.9-14.3.13; *Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th  
 22 Cir. 1995) (citing *Preiser v. Newkirk*, 422 U.S.395, 402-03 (1975) (an "inmate's release from  
 23 prison while his claims are pending generally will moot his claims for injunctive relief relating to  
 24 the prison's policies unless the suit has been certified as class action.")). But none of the six  
 25 Plaintiffs submitted any evidence in support of their Motion establishing that the unsanitary  
 26 conditions they alleged in the operative complaint actually occurred, that they suffered any  
 27 injuries caused by the alleged unsanitary conditions, or that the alleged unsanitary conditions are  
 28 the result of an unconstitutional ACSO policy or practice. *See Spokeo, Inc. v. Robins*, 136 S. Ct.



1 1540, 1548 (2016) (proposed class representatives must be able to prove an actual injury).

2 Plaintiffs also cannot meet Rule 23(b)'s requirements. Rule 23(b) requires proof that "the  
3 party opposing the class has acted or refused to act on grounds that apply generally to the class, so  
4 that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as  
5 a whole." Fed. R. Civ. P. 23(b)(2). As detailed above, ACSO already has robust policies and  
6 procedures in place to ensure that proper inmate sanitation is achieved at the Jail. Corvello Decl.  
7 ¶¶ 3-14. Additional sanitation policies and procedures are being developed with Joint Expert  
8 assistance under the Court's oversight through the *Babu* Consent Decree process. *Id.* at ¶¶ 9-10,  
9 14; RJN ¶ 1, Exh. A at A-60 through A-68. For these reasons, certification of Plaintiffs'  
10 proposed inadequate sanitation subclass under Rule 23 is inappropriate and Plaintiffs' Motion  
11 must be denied.

12 **C. Plaintiffs' Proposed Subclass is Barred by *Res Judicata*.**

13 Finally, certification of Plaintiffs' proposed inadequate sanitation subclass is also  
14 improper, because the class is barred by the principles of *res judicata*. "A lawsuit involving the  
15 same parties and based on the same cause of action as asserted in a previous case is barred under  
16 the doctrine of *res judicata*." *Brown v. Ticor Title Ins. Co.*, 982 F.2d 386, 392 (9th Cir. 1992).  
17 *See also Hansberry v. Lee*, 311 U.S. 32, 40 (1940) ("there is scope within the framework of the  
18 Constitution for holding in appropriate cases that a judgment rendered in a class suit is *res*  
19 *judicata* as to members of the class who are not formal parties to the suit").

20 The Court's decision in *Alaska Sport Fishing Ass'n v. Exxon Corp.* (*Alaska* lawsuit), 34  
21 F.3d 769 (9th Cir. 1994) is illustrative of the reason why Plaintiffs' proposed sanitation subclass  
22 must be rejected. This putative lawsuit was brought by a group of fisherman seeking damages  
23 arising out of the 1989 Exxon Valdez oil spill. *Id.* at 770. On appeal the Ninth Circuit upheld the  
24 lower court's dismissal of the fisherman-plaintiffs' lawsuit under the principles of *res judicata*.  
25 *Id.* at 774. The Ninth Circuit found that: (1) the fisherman-plaintiffs were privy to a prior federal  
26 suit brought by the government on behalf of the public that resulted in a consent decree, because  
27 the consent decree "specifically provide[d] that the governments were acting in all capacities for  
28 their citizens;" and (2) the damages sought by the fisherman-plaintiffs in the second lawsuit were



1 the same damages covered by the prior consent decree. *Id.* at 773. The Ninth Circuit also  
 2 affirmed the lower court’s finding that the only claims arising out of the 1989 Exxon Valdez oil  
 3 spill that survived after the entry of the consent decree “were ‘uniquely private’ tort claims” and  
 4 that class certification was therefore improper. *Id.* at 774.

5 The present case is analogous to the *Alaska* lawsuit. Here, similar to the *Alaska*  
 6 fisherman-plaintiffs, Plaintiffs were privy to the prior lawsuit that resulted in the *Babu* Consent  
 7 Decree because they are members of the certified class. RJN ¶ 1, Exh. A at A-5 (“On January 21,  
 8 2020, the Court certified a class consisting of ‘all adults who are now, or in the future will be,  
 9 incarcerated in the Alameda County Jail’”). The inadequate sanitation claims Plaintiffs seek to  
 10 assert in this action on behalf of their proposed subclass are specifically covered by the *Babu*  
 11 Consent Decree provision requiring ACSO to implement policies and procedures to ensure proper  
 12 sanitation during the COVID-19 pandemic. *Id.* at A-11 through A-14. As discussed above,  
 13 proper sanitation practices are currently in place and ACSO does not have any plans to halt any of  
 14 the additional cleaning practices implemented in response to the COVID-19 pandemic. Corvello.  
 15 Decl. ¶¶ 3-8, Exh. G. ACSO is also actively working to ensure that all of its current sanitation  
 16 practices are reflected in written policy. Corvello. Decl. ¶ 8.

17 The inadequate sanitation claims Plaintiffs seek to assert on behalf of inmates with  
 18 “mental health issues” are also covered by the *Babu* Consent Decree. A subclass was certified in  
 19 the *Babu* lawsuit to address the needs of “all qualified individuals with a psychiatric disability, as  
 20 that term is defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and California Government  
 21 Code § 12926(j) and (m), and who are now, or will be in the future, incarcerated in the Alameda  
 22 County Jail.” *Id.* at A-5 to A-6. As discussed above, ACSO already has policies and procedures  
 23 in place to ensure that mentally ill inmates adhere to proper sanitation practices. Corvello. Decl. ¶  
 24 8, Exh. G. ACSO is also actively working with the *Babu* Joint Experts to develop additional  
 25 policies and procedures to comply with the Consent Decree’s requirements relating to ensuring  
 26 that inmates with cognitive, developmental and/or intellectual disabilities maintain proper  
 27 sanitation and good hygiene. Corvello. Decl. ¶¶ 9-10. In light of these facts, Plaintiffs’ proposed  
 28 improper sanitation subclass necessarily involves the same parties as the *Babu* lawsuit and is thus

1 barred by the principles of *res judicata*.

2 Next, just as in the *Alaska* lawsuit, Plaintiffs' proposed improper sanitation subclass is  
 3 barred by the principles of *res judicata* because Plaintiffs are seeking injunctive relief covered by  
 4 the Consent Decree. "Plaintiffs' case is a Rule 23(b)(2) case." Dkt. No. 234 at 10:14 ("Plaintiffs'  
 5 Reply in Support of Motion for Class Certification Re: County Defendants' Opposition"). The  
 6 *Babu* Consent Decree provides proper and adequate injunctive relief for the allegedly inadequate  
 7 sanitation issues raised by Plaintiffs in this case. *See* RJN ¶ 1, Exh. A at A-5 through A-10, A-24  
 8 to A-27, A-60 through A-68 (outlining sanitation requirements and providing a robust  
 9 enforcement mechanism). *See also S.E.C. v. Randolph*, 736 F.2d 525, 528 (9th Cir. 1984) ("A  
 10 consent decree offers more security to the parties than a settlement where 'the only penalty for  
 11 failure to abide by the agreement is another suit (citations omitted). A consent decree is a  
 12 judgment, has the force of *res judicata*, and it may be enforced by judicial sanctions, including as  
 13 in this case, citations for contempt."). Thus, any remaining inadequate sanitation claims are  
 14 "'uniquely private' tort claims" that are not proper for class certification. *Alaska Sport Fishing*  
 15 *Ass'n*, 34 F.3d at 774. *See also* Dkt. No. 231 at 13-18 (discussing the individualized nature of  
 16 Plaintiffs' claims generally).

### 17 **III. CONCLUSION**

18 Thus, for all of the foregoing reasons, the Alameda County Defendants respectfully  
 19 request that the Court reject Plaintiffs' attempt to certify an inadequate sanitation class and deny  
 20 Plaintiffs' Class Certification Motion in full.

21 Dated: March 9, 2023

22 By: /s/ Temitayo O. Peters

Jonathan J. Belaga  
 SKANE MILLS LLP

24 Gregory B. Thomas  
 Temitayo O. Peters  
 BURKE, WILLIAMS & SORESENSEN,  
 LLP

26 Attorneys for Defendants  
 27 ALAMEDA COUNTY SHERIFF'S  
 28 OFFICE, ALAMEDA COUNTY